

**In the Court of Kanwaljit Singh Bajwa,
Additional District Judge, Jalandhar.**

(UID No.PB00059)

PBJL010099282019



CASE NO. : ARB/251/2019
CNR NO. : PBJL010099282019
Presented on : 16-03-2019
Registered on : 16-03-2019
Decided on : 09-10-2019
Duration : 0 years, 6 months, 24 days

1. Union of India, Ministry of Road Transport and Highways through Project Director, NHAI-PIU-Jalandhar (Pb).
2. The Project Director, National Highway Authority of India, PIU, 778, Kalia Colony, Jalandhar (Pb).

.... Petitioners.

Versus

1. Jugal Kishore son of Hari Chand;
2. Varinder Kumar son of Hari Chand;
residents of Village Harse Mansar, Tehsil Mukerian, District Hoshiarpur.
3. Commissioner Jalandhar Division cum Arbitrator, Jalandhar;
4. The Competent Authority-cum-Sub Divisional Magistrate, Mukerian, District Hoshiarpur (Pb).

.... Respondents.
(CWP No.1860/2014)

(Petition under Section 34 of the Arbitration and Conciliation Act, 1996 as amended vide the Arbitration and Conciliation (Amendment) Ordinance Act 2015 for setting aside the Arbitration Award dated 25.09.2018 (In the case MA-227 of 2018) made by Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar.)

...

Present:- Sh.Kulbir Singh Minhas, counsel for the petitioners.
Respondents exparte.

ORDER:

1. Petitioner-Union of India, Ministry of Road Transport and Highways through Project Director acquired Agricultural & Non

Agricultural land of various villages of Tehsil Mukerian, District Hoshiarpur for the public purpose of building (four laning)- maintenance, management and operation of National Highway No.1-A on the stretches of Jalandhar–Pathankot section from KM-26.00 to KM-117.20 and Pathankot–Jammu section from KM-3.26 to KM-16.50, falling in the state of Punjab vide Six Gazette Notifications under section 3A and 3D of N.H.Act on different dates. The details of Gazette notifications are reproduced here in below:-

First Notifications U/s 3A and 3D of NH Act(for land situated in villages of Tehsil Mukerian)		
3A	S.O 1422 (E)	Dated 24-12-2004
3D	S.O 991 (E)	Dated 11-07-2005
Sr.No	Villages	
1	Aima Mangat	
2	Bhangala	
3	Chak Allabaksh	
4	Chak Kallan	
5	Dugri Rajputtan	
6	Harsa Mansar	
7	Jandwal	
8	Khanpur	
9	Latifpur	
10	Mushahibpur	
11	Talwandi Kallan	
12	Tikhowal	

Second Notifications U/s 3A and 3D of NH Act(for land situated in villages of Tehsil Mukerian)		
3A	S.O 1458 (E)	Dated 05-10-2005
3D	S.O 639 (E)	Dated 02-05-2006
Sr.No	Villages	
1	Chak Allabaksh	
2	Dugri Rajputtan	
3	Harsa Mansar	
4	Talwandi Kallan	

Third Notifications U/s 3A and 3D of NH Act(for land situated in villages of Tehsil Mukerian)		
3A	S.O 1210 (E)	Dated 28-07-2006
3D	S.O 2062(E)	Dated 01-12-2006
Sr.No	Villages	
1	Dugri Rajputtan	
2	Harsa Mansar	

Fourth Notifications U/s 3A and 3D of NH Act(for land situated in village of Tehsil Mukerian)		
3A	S.O 1450 (E)	Dated 16-05-2010
3D	S.O 2623 (E)	Dated 25-10-2010
Sr.No	Villages	
1	Chak Allabaksh	
2	Harsa Mansar	
3	Jandwal	

2. This objection petition has been filed against the award dated 25.09.2018 in case MA-227 of 2018.

3. It is submitted that by virtue of the publication of the aforesaid Notifications for acquisition of the aforesaid land, the aforesaid land was acquired and compensation was paid to the persons having interest in the acquired land in terms of provisions of Section 3-G of the Act. The present respondent-landowners had approached the Hon'ble High Court of Punjab & Haryana by filing a Civil Writ Petition. In the said writ petition, the petitioners had sought the relief of grant of Solatium and Interest on the basis of law laid down in **“M/s Golden Iron and Forgings Vs. Union of India and Others, 2011(4)-Recent Civil Reports-375”**. Keeping in view the issue involved in the writ petition, the Hon'ble High Court of Punjab & Haryana had disposed off the same with the directions to Competent Authority-cum-Land Acquisition Collector (here-in-after referred to as CALA) to determine the claim of the land owners with regard to grant of Solatium and interest in accordance with the law laid down by the Hon'ble High Court. The perusal of the order passed in the above said writ petition would reveal that the Hon'ble High Court has nowhere in its order stated that the land owners are entitled to the benefits of Solatium and Interest in accordance with the judgment passed in **“M/s Golden Iron and Forging’s case (supra)”**, rather, the matter was sent to CALA to determine as to

whether the land owners are entitled to the above said benefits or not. It is further stated that in pursuance to the directions issued by the Hon'ble High Court, CALA had initially passed an order on 23.12.2014, which was challenged by the present applicants before the Arbitrator and the Arbitrator agreeing to the contentions put forth by the applicants had set aside the order of the CALA dated 23.12.2014 vide its order dated 20.12.2017 directing the CALA to decide the matter afresh keeping in mind the direction so issued by the Court.

It is further stated that after the remand, the Competent Authority-cum-S.D.M, Mukerian, had passed the supplementary Award on 27.03.2018, which was again challenged by the petitioners before the Arbitrator by filing the appropriate application under the provisions of National Highway Act. The Arbitrator, after hearing the matter, passed the speaking order in a haste manner without taking into consideration the grounds stated in the application and also without taking into consideration the provisions applicable on all the proceedings done under the provisions of National Highway Act. Thus, the impugned Award passed by the Arbitrator is not executable and becomes redundant and is liable to be set aside. The Arbitrator, while adjudicating the present case in hand, has not taken into consideration that the Competent Authority-cum-S.D.M, Mukerian, has not complied with the directions so issued by the Hon'ble High Court and Hon'ble Supreme Court and as well as by the Arbitrator vide its Award dated 20/12/2017, wherein, it has been specifically directed to the Competent Authority-cum-SDM, Mukerian, to pass fresh speaking order keeping into view the pronouncement made in **"M/s Golden Iron and Forging's case (supra)"**. The learned CALA has acted beyond the ambit and scope of the

above said judgment and had given the benefits to which the landowners are not entitled to. The CALA misconstrued the factum of the Golden Iron's case supra and calculated a wrong amount of compensation, which is not according to the Section 23(2) and Section 28 of the Land Acquisition Act, rather, the same is based upon assumption and presumption. The solatium has been paid without any delay as the landowners have been held entitled for the first time by the present impugned orders. As such, there arises no question to pay the interest to the landowners on the amount of solatium as well as the amount, which has already been paid qua the acquisition of their land under the purview of Section 28 of the Land Acquisition Act.

It is further stated that the Arbitrator has not taken into consideration the fact that the land was acquired by virtue of notification under Section 3 (a) and 3 (d) of the Act and the respondents/landowners had not raised any objection with regard to non-granting of benefits of solatium and interest after the pronouncement so made by the Division Bench of the Hon'ble High Court in **"M/s Golden Iron and Forging's case (supra)"**. Thus, the delay occurred on the part of landowners for not agitating the claim qua the non grant of the benefits of solatium and interest would not give any cause to grant interest on the solatium to the landowners till the pronouncement of the supplementary award by the CALA on 27.3.2018. Moreover, the Arbitrator has failed to consider the fact that the landowners have failed to produce any substantial document-evidence to the effect that they had agitated against the non-grant of benefits of solatium and interest by the CALA immediately after receiving the initial amount of compensation from the CALA qua to their land acquired. As such, they are not entitled to any interest under the provisions of Section 28 of Land

Acquisition Act on solatium. However, this fact has been ignored by the Arbitrator while adjudicating the application filed by the present petitioners.

It is further stated that the CALA has acted beyond the pronouncements so made by the Hon'ble High Court and Hon'ble Supreme Court and also against the provisions of the Land Acquisition Act and has calculated the wrong amount in its supplementary award, thus, made it liable to be set aside being non-executable in the eyes of law. Moreover, the speaking order of the CALA is vague with respect to how the learned CALA has arrived to the conclusion that the interest @ 9% PA and 15% PA as prescribed under Section 28 of the Land Acquisition Act is liable to be paid to the land owners on the amount of compensation qua the land which has been assessed by CALA at the initial stage of acquisition and stood duly paid by the petitioners. It seems that CALA has misconstrued the provisions of Section 28 of Land Acquisition Act with the provisions of Section 34 of the Land Acquisition Act, which Section otherwise is not applicable to the acquisitions made under the National Highway Act. It is also not out of place to mention here that so far as the pronouncement so made in **“M/s Golden Iron and Forging's case (supra)”** is concerned, the same is with regard to grant of solatium and interest in terms of Section 23(2) and 28 of the Land Acquisition Act and not with regard to Section 34 of the Land Acquisition Act. The Arbitrator has wrongly enhanced the compensation without considering the matter. Hence, this objection petition.

4. Upon notice, none appeared on behalf of respondents despite service. Consequently, the respondents were proceeded against exparte. Thereafter, Arbitration record was summoned.

5. I have heard the learned counsel for the petitioners and have

meticulously examined the record in the light of his contentions and settled law of the land.

6. While referring to the case law titled as **“Sunita Mehra and another vs. UOI and others bearing Civil Appeal No.10553 of 2011 decided on 11.08.2016**, it has been contended by the learned counsel for the petitioners that the Hon’ble Apex Court has held that the opinion of the learned Solicitor General that if the restriction are not put on the judgment titled **“M/s Golden Iron and Steel Forgings vs. Union of India and others, 2011(4)-R.C.R(Civil)-375”**, then, it may open the flood gates for endless litigation and it has been held that the award of Solatium and interest on Solatium should be made effective only to the proceeding pending on the date of the judgment of M/s Gold Iron’s case (supra) i.e., 28.03.2008. He has submitted that there were numerous cases being filed after placing reliance upon the judgment so passed in M/s Golden Iron’s case before the Hon’ble High Court despite being no restriction whatsoever for time taken to approach the Hon’ble High Court or as well as qua to different forums and Courts, such as competent authority/arbitrator or Court under Section 34 of the Arbitration and Conciliation Act,1996. The Hon’ble High Court has deliberately taken up this issue and discussed thoroughly the pronouncement so made by the Division Bench of Hon’ble High Court in M/s Golden Iron’s case and subsequently, the pronouncement so made by the Hon’ble Apex Court in Sunita Mehra’s case qua the point as to how the ratio, which has been culled out in M/s Golden Iron’s case will be applicable to the acquisition proceedings done under National Highway Act, 1956. It has been further submitted that the Hon’ble High Court in its judgment dated 15.11.2018 has categorically taken both the judgments into consideration

and arrived to the conclusion that since the petitioners, who had slept over their own rights qua to the non-grant of benefits as envisaged under Section 23(2) and 28 of the Act and had not approached the Hon'ble High Court as well as different forums/arbitrators/competent Court are not entitled to the interest for the period of delay. Learned counsel for the petitioners has contended that the Hon'ble High Court had duly taken into consideration the view so expressed by the Hon'ble Apex Court in "Sunita Mehra's case. He contends that since the petitioner had not opted to further agitate the matter with regard to enhancement before the Arbitrator and it has been categorically held by the Hon'ble Apex Court that where the proceedings are pending on the date of order of Division Bench, the benefit would accrue to the land owners. Here in the present case, the landowners failed to agitate their claim qua non-grant of solatium and interest before the competent Court/forum and had approached to the Hon'ble High Court by filing the individual writ petition after the lapse of so many years and they had slept over their own rights, as such, they are not entitled to the interest under the provisions of Section 28 of the Land Acquisition Act till the payment as expressed in the judgment dated 15.11.2018 passed while deciding CWP No.20048 of 2018 titled as "Waryam Singh vs. Union of India and others". Lastly, it has been prayed that the objections be accepted and the award passed by the learned Arbitrator be set aside.

7. I have considered the aforesaid contentions raised by the learned Counsel for the petitioners and have minutely evaluated the material on record in the light of the settled law of the land.

8. At the outset it is observed that in pursuance to the directions issued by the Hon'ble High Court, the Competent Authority had initially

passed an order on 23.12.2014, which was challenged by the present applicants (UOI etc.) before the Arbitrator and the Arbitrator had set aside the order dated 23.12.2014 passed by the Competent Authority vide its order dated 20.12.2017 directing the Competent Authority to decide the matter afresh keeping in mind the directions so issued by the Hon'ble High Court. After the remand, the Competent Authority-cum-S.D.M, Mukerian, had passed the supplementary Award on 27.03.2018, which was again challenged by the petitioners before the Arbitrator which petitions were disposed off vide impugned order dated 25.9.2018.

9. The learned Arbitrator while accepting the plea of UOI, had observed as under in the operative part of the order impugned.

“I have perused the file and heard the learned counsel for the applicant at length. Keeping in view the controversy involved and to protect the right of land owners the case is disposed of at this stage in the following manners:-

i) In the light of judgment passed in M/s golden Iron and Forgings Versus Union of India, that the landowners are entitled to the benefits of solatium and interest thereupon under Section 23(2) and 28 of Land Acquisition Act. As such National Highway Authorities are directed to pay interest on the Solatium.

ii) In so far as the grant of interest on initial amount of compensation paid qua to land and structure, which falls under purview of Section 34 of Land Acquisition Act, the matter regarding the same is still subjudice before Hon'ble Punjab and Haryana High Court in LPA No. 2342 of 2017 titled as “National Highways Authority of India versus Surjit Singh Saini and others”, wherein Hon'ble High Court has stayed the disbursement on the benefits granted

under Section 23(1)(A) and Section 34 of the Land Acquisition Act. As such, Competent Authority cum Land Acquisition collector, Mukerian is directed to wait the final out-come in LPA No. 2342 of 2017 and the decision of Hon'ble High court will be applicable in the present application.

10. It goes without saying that the order passed by the competent authority was in compliance of the directions made by the Hon'ble High Court. So far as the order of the learned Arbitrator on count (ii) is concerned, in the considered view of this Court, the matter ought not be left undecided. A categorical conclusion was required to be arrived at which may or may not withstand the judicial scrutiny. Until and unless a categorical finding is rendered by the Arbitrator, the award would remain un-executable. In fact, the anomaly created by the award impugned has left the parties concerned totally befuddled because none of them are clear about the amount to which the land owner is entitled to and the NHAI is liable to deposit. The award is thus incomplete, un-executable and is thus not sustainable. The reference before the Arbitrator can not be said to have been finally disposed off by keeping one of the issues alive till a future contingency. The matter was liable to be decided completely by the Arbitrator when the order of CALA was impugned before him. He ought not have kept the matter undecided while disposing off the petition finally. So far as reference to the order passed in LPA No. 2342 of 2017 titled as "*National Highways Authority of India versus Surjit Singh Saini and others*" has been made by the learned Arbitrator, in this regard it is observed here that it has been rightly noted in the award impugned that the Hon'ble High Court has stayed the disbursement of the benefits granted under Section 23(1)(A) and Section 34

of the Land Acquisition Act. As such it is imperative to note here that grant of a particular benefit to the land owner is one thing and disbursal thereof is another thing. The public policy as it emerges from the judicial pronouncements leaves no manner of doubt that the adjudicatory authorities are to render a complete and categorical verdict on each of the aspects raised before them. However, the impugned award has put both the parties in ‘a chicken and egg’ situation which left them totally bemused in quantifying the amount payable on the basis of the award impugned. Moreover and more importantly, there is no denial to the fact that while passing the award impugned the learned Arbitrator even failed to issue notice to the parties opposite and hear them. This method is unknown to law and is violative of the specific provisions of the Act and is against the public policy as well. It is apparent from the award impugned that there was no representation on behalf of the private land owners for want of issuance of notice. Therefore, the golden right of “audi-alterm-partem” was denied by the arbitrator to the private land owners while acting in a haste and against the rights of private land owners. The Arbitrator ought not have set aside the well reasoned order of the Competent Authority without adhering to the specific provisions of the law under which he was exercising his jurisdiction of statutory arbitrator. As such in the opinion of this Court the award does not subscribe to the settled legal position as well as public policy of this nation and is thus not sustainable. It is to be noted here that in COCP No.705 of 2019 the Hon’ble High Court while disposing off various contempt petitions had directed the NHAI to deposit the amount within a period of two months and said petitions had arisen from the same acquisition.

11. Another contention in the present petition under Section 34 of

Arbitration and Conciliation Act 1996, is that whether solatium and interest as envisaged under s. 23(1A), (2) and interest under Section 28 of Land Acquisition Act is payable or such payment under these heads is barred by provisions of NHAI Act. He further contends that in view of CWP No.20048 of 2018, landowners are not entitled for interest for the period of delay caused by them in agitating the matter. Notably, vide impugned order dated 25.09.2018, the Arbitrator has found that land owners whose land has been acquired by NHAI are entitled to payment of solatium and interest thereof under Section 23(2) and Section 28 respectively, but has directed the CA-LA to not grant the benefit under Section 23(1A) of the Land Acquisition Act and to await decision of the Hon'ble Punjab and Haryana High Court in LPA 2342 of 2017 in which disbursal of the amount quantified under Section 23(1A) was stayed. Apparently, the learned Arbitrator could neither comprehend nor appreciate that rendering an award and disbursal of the amount are two separate issues. So far as the question of “black out period” as raised by learned counsel for the petitioners is concerned, in this regard, it is observed that the facts of the present case are distinguishable from that of the cited case. Here in this case, the petitioners cannot be benefited because the litigation remained alive before one fora or the other and the landowners are not guilty of any delay and laches. After receipt of award money, they had taken up the steps for redressal of their grievances within reasonable time. Moreover, the Hon'ble High Court had referred back the matter only on limited aspect to the competent authority. As such, the contention of petitioners is not sustainable at this stage.

12. Further, it would be expedient to note that this issue is no more res-integra as Hon'ble Supreme Court of India in the matter of **Union of**

India vs. Tarsem Singh (Civil Appeal No.7064 of 2019- decision dated 19.09.2019) has struck down Section 3J of NHAI Act being violative of Article 14 of The Constitution of India and has held that:

There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ SLP (C) No. 9599/2019 is dismissed.

13. In light of the Law as enunciated by the Hon'ble Supreme Court of India as extracted above, there remains no manner of doubt that NHAI is bound to pay the benefits under Section 23(1A) of Land acquisition Act as well along with the solatium and interest in terms of Sections 23(2) and 28

of the Act. Order of the Arbitrator so far as it directs withholding the decision qua relief under Section 23(1A) of Land acquisition Act for want of settled/binding legal precedent is no more sustainable in view of the aforesaid pronouncement of Hon'ble Supreme Court of India, and is accordingly set aside, and in peculiarity of the circumstances of the present litigation where the private land owners were denied an opportunity of being heard, the Arbitrator is directed to pass an order afresh in accordance with the law laid down by the Hon'ble Supreme Court in **Union of India v Tarsem Singh (supra)** after affording the parties a reasonable opportunity of being heard.

The petition is partly accepted in the aforesaid terms. Arbitration record be returned to the concerned quarter. Memo of costs be prepared and file be consigned to the Record Room.

Pronounced in open Court
Dt: 09.10.2019.

Anil Singla

(Kanwaljit Singh Bajwa)
Addl.District Judge,Jalandhar.
(UID No.PB00059)